HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
And
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

W.A. NO.1654 OF 2003

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Between:
The Mandal Revenue Officer

.....Petitioner

AND

Budda Apparao Naidu (died)rep by
L.Rs. Dadi Narayana Swamy and 8 others.

.....Respondents

::ORDER::

Counsel for the Petitioner: Sri A. Satya Prasad,
Special Government Pleader

Counsel for Respondents: Sri O.Manoher Reddy

Dated 17/8/2006

Per Sri G.S.Singhvi, CJ

This is an appeal for setting aside order dated 23-7-2002, whereby the learned Single Judge dismissed the writ petition filed by the appellant against order dated 2-8-1999 passed by the Commissioner of Appeals, Office of Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad (for short, 'the Commissioner').

It is borne out from the record of the case that application filed by Sri K.Venkatanarasimha Rao under Section 15(1) of the Estate (Abolition and Conversion into Ryotwari) Act, 1948 (for short, 'the Act') for cancellation of pattas issued in respect of the land situated in Venkatapathirajupeta Village (specified in the schedule appended in the application) by claiming that the same were private lands and the tenants do not have occupancy rights was dismissed by Assistant Settlement Officer, Anakapally, vide his order dated 30-10-1967. On appeal, the Estate Abolition Tribunal set aside the order of the Assistant Settlement Officer and remanded the case for fresh enquiry. Thereafter, Settlement Officer, Visakhapatnam (for short, 'the Settlement Officer'), vide his order dated 3-4-1972, again dismissed the application of Sri K. Venkatanarasimha Rao.

After about 13 years of dismissal of the application filed by Sri Venkatanarasimha Rao, the predecessor of the private respondents, namely, Budda Apparao Naidu filed an application under Section 11 (a) for issue of ryotwari patta in respect of the land specified in the schedule by claiming that he had purchased thirty-two (32) acres of

land from Adari Mahalakshmi, Sunkara Sanyasi and Konthala Sanyasi, who were cultivating tenants. He also claimed that an additional piece of land measuring nine acres had been purchased by him in the year 1960. Still further, he averred that possession of the entire land was with him. After a detailed enquiry, the Settlement Officer passed order dated 27-5-1986 whereby he accepted the application of Budda Apparao Naidu. He noted that pattas had already been issued in favour of the applicant, but the entries made in Fair Adangal had been erroneously amended to his disadvantage. The Settlement Officer directed restoration of the original entries in Fair Adangal and declared that there is no necessity to issue fresh pattas. For the sake of convenient reference, paragraphs 16 and 17 of the order dated 27-5-1986 passed by the Settlement Officer are reproduced below:

> "16. The stand of the petitioner is that in the Fair Adangal, the lands are shown as patta lands, he was issued rough pattas at the time of field work of the Settlement Operations, but for reasons unknown, changes have been carried out in the Fair Adangal as Gayalu. Therefore, in his petition dated 11-11-'84 the petitioner claimed for restoring the entries in Fair Adangal or alternatively to issue fresh pattas under Section 11(a) of the Act. I have perused the Fair Adangal of our office, case files in S.R.11(a)526/67 VSP and S.R.15(1) 322/67 VSP. In S.R.15 (1)/322/67 VSP dt.30-10-67, the Assistant Settlement Officer passed an order rejecting the claim of the landholders and recorded that orders in 11(a) enquiry will be issued separately. There is no order that the land should be classified as Assessed Waste. In S.R.11(a) 526/67 VSP dt.30-10-67, the same Assistant Settlement Officer held on the same date that the petitioners (petitioner herein also) are not entitled to ryotwari patta. He has further ordered for its classification as Assessed Waste. Against this order, an appeal had been filed by the petitioners herein and the Settlement Officer, Visakhapatnam by his order R.P.69/68 dt.31-3-68 remanded

the case to Assistant Settlement Officer for fresh enquiry. Therefore, the order of the Assistant Settlement Officer is deemed to have been set aside. His order as to classification of the land as Assessed Waste is also set aside. Therefore, the earlier classification of this land as patta land prevails and not the classification as 'Gayalu'. But surprisingly, in the Fair Adangal of the Settlement Office, Visakhapatnam on 20-1-68 entries have been recorded to the effect that the land is Gayalu by rounding off the names of Budda Apparao etc. as per 15 (1)322/VSP and S.R.11(a)526/VSP dt.30-10-67. For 322/VSP date is not mentioned but the date must also be 30-10-67 as seen from the concerned case files. The order of Assistant Settlement Officer is not a final order. But still on entry classifying the land as "Gayalu' has been recorded. This order was challenged in appeal and it was set aside and remanded to Assistant Settlement Officer on 31-3-68. After remand, again fresh enquiry has commenced but it was dropped pending disposal of landholder's claim in view of the remand of 15 (1) enquiry by the Estates Abolition Tribunal. In this order, there is no mention about the classification of land. After disposal of the 15 (1) enquiry on 3-4-'72, this 11(a) enquiry is again taken up recently and the final order u/s.11(a) is being passed now.

From the above discussion, it is clear that at the time of settlement, rough pattas were issued to the petitioner herein for all the claim S.Nos. except S.No.9 for which the cultivating tenants get a rough patta, from whom subsequently the petitioner purchased this land. At the time of settlement, this land is classified as patta land of the petitioner, as seen from the entry in the Fair Adangal. As discussed above, the Assistant Settlement Officer's order classifying this land as 'Assessed Waste' has not become final – moreover it has been set aside. Even now the enquiry 11(a) is continuing and now only an order is being passed. Therefore, the enquiry as 'Gayalu' dt. 20-1-68 is erroneous. It should not have been done. However, this wrong entry has continued. That is why the Tahsildar, Visakhapatnam in his written statement dt.18-5-68 in R.P.151/68 of Settlement Officer, Visakhapatnam stated that the lands are patta lands. A Photostat copy of this is filed.

The original is available in case file 11(a)526/67 VSP. Thus, though the entries in Fair Adangal are corrected erroneously on 20-1-'68, they were not corrected in Taluk copy of Fair Adangal upto at least 18-5-'68. In view of these facts, I am of the opinion that since the tenure of the land is not settled until now in all these statutory enquiries, what is recorded in Fair Adangal at the time of settlement must hold good. The schedule lands should continue to be classified as patta lands and not as 'Gayalu'.

17. In view of the findings on issues 1 to 3, the claim of the petitioner for restoring the original entries in the Fair Adangal as patta lands against the schedule mentioned lands is allowed. There is no necessity to issue fresh pattas as rough pattas already issued at the time of Settlement are not cancelled so far."

The appeal preferred by the present appellant was dismissed by the Director of Settlements, Andhra Pradesh, vide his order dated 22-4-1995. The appellate authority made an independent analysis of the evidence and confirmed the finding recorded by the Settlement Officer by making the following observations:

"The schedule lands are admittedly wet lands and there is settled wet cultivation. The petitioner does not dispute the ryoti nature of the land in question. The point to be considered is as to when the respondent's predecessors-in-interest were inducted into possession of the lands in question. The Inamdar executed a lease deed on 24-2-1947 in favour of Adari Mahalakshmi and 2 others. It is a registered lease deed. The recitals in the lease deed shows that the occupancy tenants migrated from Anakapally, reclaimed the land and brought it under cultivation before the lease was executed. It is therefore obvious that the occupancy tenants were inducted into possession prior to the execution of the lease deed and only after they brought the land under cultivation, the rental was fixed and a lease deed was executed. This is the usual practice in Estates. The oral evidence on record shows that the tenants have been in

possession of the land since long prior thereto. The evidence of P.W.1 was not cross-examined by the Tahsildar. Even under the Rent Reduction Act, rent was collected from the tenants and a receipt was issued by the Tahsildar, which was marked as Ex.P.11. The D.C.B. Account maintained by theInamdars during the pre-abolition period, which was filed by the Inamdars in the enquiry u/s.15 noted the names of the tenants and the same was marked as Ex.P.6 in Sec.15 enquiry. The 10(1) Account prepared by the Government immediately after the estate was taken over shows the names of the original tenants which was marked as Ex.P.9. It contains all the names of the 3 tenants as against the schedule lands. On the combined reading of the oral evidence of PWs. and recitals in the lease deed would clearly reveal that the original tenants were inducted into possession long ago. The petitioner had not produced any documentary evidence to rebut the evidence already on record. The evidence on record as stated above would reveal that the respondent's predecessors-in-interest were inducted into possession long before 1945 and the finding of the lower court is based on adequate evidence and there is no evidence produced by the petitioner to enable the Court to take a different view. Hence, I see no reason to interfere with the finding of fact arrived at by the Settlement Officer which was based on evidence on record.

The respondents examined as many as 7 witnesses including the village officers, neighbouring ryots, Inamdar's clerk, besides the claimant. The evidence shows that the respondents and their vendors were in possession of the lands since prior to 1945 and the respondents have been possession prior to the notified date i.e., 7-1-1959. The respondent acquired occupancy rights from the original tenants under Ex.P.1 before the notified date. Ex.P.9 which is an extract of 10(2) Account from 1357 Fasli shows the respondents and their vendors have been in possession of the land long before the notified date. The Land Revenue receipts under R.R.Act would also show that the vendors of the respondents were in possession of the lands before the notified date. The original tenants, even as per the

documentary evidence, would clearly show that they were in possession continuously for more than 12 years before the notified date. The respondent's possession is from the date of the sale namely 1956 and their vendors possession is from 1947 and prior thereto and hence the respondents were also in possession of the lands before the notified date. Ex.P.7 series of land revenue receipts would show that they are in continuous possession even after the notified date. It is therefore clear that the respondents were in possession before the notified date. The petitioner did not produce any records whatsoever to enable the court to reassess the evidence on record. Since the petitioner did not file any evidence before me, I see no reason to interfere with the finding of the lower court on point No.2.

The Government acquired a part of the land in dispute from the respondent under Land Acquisition and paid compensation to the respondent. The judgment of the District Court in O.P.No.41/72 was marked Ex.P.8. While the respondents contend that this judgment operates as res judicata, the petitioner contends that it does not. The question is whether Ex.P.9 operates as res judicata.

The evidence on record, as stated earlier, would show that the Inamdar inducted Adari Mahalakshmi and others into possession of the lands before 1-7-1945 and that the land is under wet cultivation under specified wells and a tank as recited in the registered lease deed of 1947 and that the tenants validly transferred the occupancy right in favour of the respondents on 31-12-1956. Occupancy right is both heritable and alienable u/s.10 of the E.L.Act. In view of my findings on issues 1 and 2 above, it is not necessary to decide the issue whether the judgment in O.P. operates as res judicata. On findings 1 and 2 alone, the respondent is entitled to a patta u/s.11(a) of the Act. The District Court also awarded compensation to the respondents when a part of the land was acquired by the Government and paid compensation treating the respondent as the owner of the land. This lends support to my findings on issues 1 and 2 above.

In the circumstances, I do not see any reason to interfere with the orders of the Settlement Officer, Visakhapatnam

passed in SR.No.11(a)3/85/VSP,
dt.27-5-1986."

The revision filed by the appellant against the order of the Director of Settlements was dismissed by the Commissioner, who too concurred with the finding recorded by the Settlement Officer that Budda Apparao Naidu had been rightly granted ryotwari pattas.

Undettered by the adverse orders passed by three authorities, all of whom concurrently accepted the claim put forward by Budda Apparao Naidu, the appellant preferred writ petition under Article 226 of the Constitution of India with the prayer that order dated 2-8-1999 passed by the Commissioner may be set aside. The same was registered as Writ Petition No.8480 of 2002. The learned Single Judge, vide his order dated 23-7-2002, dismissed the writ petition by observing that the petitioner is guilty of laches. The learned Single Judge further held that the concurrent findings of fact recorded by three authorities does not suffer from any error apparent.

Sri A.Satya Prasad, learned Special Government Pleader argued that the order under challenge should be set aside because while dismissing the writ petition on the ground of laches, the learned Single Judge overlooked the averments contained in paragraph 2 of the affidavit of Sri G.Bhaskara Rao, the then Mandal Revenue Officer, Gajuwaka Mandal, Visakhapatnam District. He pointed out that after dismissal of the revision petition by the Commissioner, the State Government vide its Memo No. 87410/JA/2/93, dated 21-8-2000 directed the Collector to file revision before the State Government and later on issued direction vide Memo No.77659/JA(2) 2000-3, dated 2-1-2002 for filing the writ petition. Learned Special Government Pleader submitted that the time spent by the appellant in pursuing the remedy of revision before the State Government should

have been taken into consideration by the learned Single Judge while adjudicating the issue of delay in filing the writ petition.

Sri Satya Prasad submitted that the appellant could not have been non-suited by the learned Single Judge on the ground of delay ignoring the fact that he had been pursuing the remedy of revision. Learned counsel also assailed the finding recorded by the learned Single Judge on the merits of the case and argued that even though the Settlement Officer, Director of Settlements and the Commissioner of Appeals concurrently upheld the claim made by the predecessor of the private respondents, the learned Single Judge ought not to have approved the same by overlooking the fact that order dated 5-4-1972 passed by the Settlement Officer on the application made by Sri Venkatanarasimha Rao under Section 15 (1) had become final. In the end, Sri Satya Prasad argued that the orders under challenge should be set aside at least in respect of nine acres of land because the same was not subject matter of the application filed by late Sri Budda Apparao Naidu under Section 11 (a) of the Act.

Sri O.Manoher Reddy, learned counsel for the private respondents controverted the argument of the learned Special Government Pleader, though half heartedly, on the issue of laches, but emphatically argued that the discretion exercised by the learned Single Judge not to interfere with the concurrent finding recorded by the three authorities on the application filed by late Sri Budda Apparao Naidu does not suffer from any infirmity.

We appreciate the predicament of Sri O.Manoher Reddy in trying to support the finding recorded by the learned Single Judge on the issue of laches because it is an admitted fact that the writ petition was disposed of at the admission stage and the averments contained in paragraph 2 of the affidavit of Sri G.Bhaskara Rao to the effect that

on the advise of the Government, the appellant filed revision petition and then instituted the writ petition had not been controverted by the respondents. We can very well visualize that being an authority subordinate to the State Government, the appellant must have filed revision petition against order dated 2.8.1999 despite the fact that the same was not maintainable. Therefore, it cannot be said that the appellant was remiss in pursuing the matter. We are sure that if attention of the learned Single Judge had been specifically drawn to the averments contained in paragraph 2 of the affidavit filed in support of the writ petition, he would not have non-suited the appellant on the ground of laches.

Article 226 of the Constitution does not specify any period of limitation for filing of a petition for enforcement of legal or constitutional rights, but over the years, the superior courts have evolved several rules of self-imposed restraint including the one that the High Court will not entertain a petition filed under Article 226 of the Constitution after long lapse of time from the date of accrual of cause of action. In **State of M.P. v. Bhailal Bhai**[1], the Constitution Bench of the Supreme Court considered the issue of delay in filing petitions under Article 226 of the Constitution and laid down the following proposition:

> "The provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost

always be proper for the Court to hold that it is unreasonable."

In **Tilokchand Motichand v. H.B. Munshi**[2], another Constitution Bench of the Supreme Court, by a majority, laid down the following propositions:

> "Utmost expedition is the sine qua non for such claims. The party aggrieved must explain satisfactorily all semblance of delay. No period can be indicated which may be regarded as the ultimate limit of action for that would be taking upon itself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India each case will have to be considered on its own facts. Avoidable delay affecting the merits of the claim, will disentitle a party to invoke the extraordinary jurisdiction.
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> The question is one of discretion for this Court to follow from case to case. This Court need not necessarily give the total time to the litigant to move this Court under Article 32, even though he may be within statutory limitation. Similarly in a suitable case this Court may entertain a petition even after limitation. It will all depend on what the breach of the Fundamental Right and remedy claimed are and how the delay arose."

The aforementioned propositions were approved by the majority of the Larger Bench of nine Judges in **Mafatlal Industries Ltd. v. Union of India**[3].

If the factual matrix of this case is considered in the light of the above enumeration of law, it is not possible to approve the view taken by the learned Single Judge that the writ petition was belated.

Notwithstanding the aforementioned conclusion, we are inclined to agree with the learned Single Judge that the finding recorded by the Settlement Officer, which was confirmed by the Director, Settlements, and the Commissioner on the entitlement of Sri

Buda Apparao Naidu to be treated as a ryotwari patta holder and the direction given by him for restoration of the entries in Fair Adangal do not suffer from any jurisdictional infirmity or error of law apparent on the face of record warranting interference under Article 226 of the Constitution. It needs no emphasis that in exercise of jurisdiction under Article 226 of the Constitution of India, the High Court will not interfere with the finding of fact unless it is shown that the concerned authority did not have jurisdiction or that there has been violation of rules of natural justice or that the impugned finding is vitiated by an error of law apparent on the face of the record. An error, which can be discovered only on a detailed re-appreciation of evidence, cannot be treated as an error of law apparent on the face of the record. Likewise, sufficiency and adequacy of evidence cannot also be gone into by the High Court under Article 226 of the Constitution of India. These principles are supported by the judgments of the Supreme Court in **Syed Yakoob v. K.S.Radhakrishanan**[4], **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[5], **Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhawan Ltd.**[6], **R.S. Saini v. State of Punjab and others**[7], **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ, Varanasi & ors.**[8] and **Surya Dev Rai v. Ram Chander Rai**[9].

In the present case, the learned Government Pleader has not been able to show any patent error in the appreciation of evidence made by the Settlement Officer or the Director of Settlements or the Commissioner. Therefore, we do not find any justification to interfere with the order passed by the learned Single Judge.

There is another reason for our disinclination to entertain the

appellant's challenge to order dated 2-8-1999. For the reasons best known to him, the appellant has not challenged the orders passed by the Settlement Officer and the Director of Settlements. Therefore, even if the learned Single Judge could be persuaded to come to the conclusion that the order passed by the Commissioner was erroneous, no effective relief could have been granted to the appellant because legality of the original order as well as the appellate order had not been questioned in the writ petition.

In the result, the appeal is dismissed. However, the parties are left to bear their own costs.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

svs

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[1] AIR 1964 SC 1006
[2] AIR 1970 SC 898
[3] (1997) 5 SCC 536
[4] AIR 1964 SC 477
[5] AIR 1970 SC 61
[6] (1984) 3 SCC 5
[7] JT 1999 (6) SC 507 = (1999) 8 SCC 90
[8] JT 2002 (8) SC 69 = (2002) 9 SCC 375
[9] AIR 2003 SC 3044